UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE, Individually and
As Next Friend of JULIE DOE, a minor,

Plaintiffs,

v.

MYSPACE, INC., and
NEWS CORPORATION,

Defendants.

No. 06-cv-7880 (MGC/AJP)

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT MYSPACE, INC.'S MOTION TO TRANSFER

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Dated: November 6, 2006

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Plaintiffs respectfully request that the Court deny Defendant Myspace Inc. ("Myspace" or "Defendant") Motion to Transfer because:

1. Defendants' fraudulent and negligent misrepresentations were perpetuated in and emanated from this District;

2. Many of the decisions concerning Defendants' security policies (or lack thereof) were made in the Southern District of New York;

3. Defendant New Corp., who owns and operates MySpace, is headquartered in the Southern District of New York and cannot seriously argue that it is inconvenienced by a trial before this Court;

4. Plaintiff's Counsel intends to file interventions on behalf of five additional children, including one plaintiff that resides in New York, that were injured by the same conduct; and

5. It will be more convenient for Defendants to defend a consolidated lawsuit in their home state, instead of defending six different lawsuits spread out in multiple states.

I.

Facts

Julie Doe, an innocent 14 year-old girl, was raped because MySpace failed to provide any reasonable safety measures to prevent sexual predators from communicating with children on its website.[1] Unfortunately, numerous other young girls have suffered the same fate as Julie because of MySpace's conduct. In fact, Plaintiffs' Counsel represents five other victims from New York, South Carolina, Texas, and Ohio where 14 and 15 year old girls have been raped in situations similar to those here. This rash of sexual assaults has been well-documented, leading states' attorneys general to demand that MySpace institute security measures and age verification mechanisms to protect the millions of children who frequent the website. Tragically, MySpace's reaction has proven too slow and ineffective.

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[1] The facts of Julie Doe's sexual assault by Pete Solis, an older MySpace member, is described in detail in *Plaintiffs' Original Complaint*, which is incorporated herein by reference.

Plaintiffs filed this suit against MySpace for negligence and other causes of action stemming from its failure to institute reasonable measures to prevent sexual predators and older MySpace uses from communicating with young girls like Julie Doe. Plaintiffs' original lawyers decided to file this case in Texas state court. Candidly, after associating an additional firm, Plaintiffs and their Counsel decided to pursue this case in News Corp.'s home forum and to utilize a strategy of prosecuting all cases in one central forum so as to: (1) streamline the discovery process and trial of this important case and (2) minimize expenses for all parties—including Defendants. Defendants now seek to transfer the case to Austin essentially based upon the convenience of approximately three. Defendants have failed to meet their burden of proving that those witnesses' convenience, coupled with little else, "strongly outweighs" the great deference owed to Plaintiffs' choice of forum. Accordingly, Plaintiffs ask that the Motion be denied.

II.

Legal Standard

28 U.S.C. § 1404(a) permits transfer of an action "[f]or the convenience of parties and witnesses, in the interest of justice." Among the factors a court should consider in exercising its discretion to transfer venue pursuant to 28 U.S.C. § 1404(a) are: (1) the existence of a forum selection clause, (2) the location of the events giving rise to the suit, (3) the convenience of the parties, (4) the convenience of the witnesses, (5) the relative ease of access of proof, (6) the availability of process for unwilling witnesses, (7) plaintiff's choice of forum, (8) a forum's familiarity with the governing law, (9) trial efficiency, and (10) the interest of justice. *Ramada*

Franchise Systems, Inc. v. Cusack Development, Inc., 1997 WL 304885, at *3 (S.D.N.Y. June 6, 1997) (Cedarbaum, J.). The moving party bears the burden of establishing that the pertinent factors compel a change of forum. To meet this burden, a defendant must show that the relevant factors ***strongly favor transfer***. *Id.* (emphasis added).

III.

The Venue Factors Do Not Warrant Transfer

Essentially, none of the factors other than the availability of a few witnesses favor transfer. And that alone is insufficient for Defendants to carry their heavy burden.

A. The Convenience of the Parties favors retention

Plaintiffs chose to file this lawsuit in this forum and have accordingly stated their preference that the action continues in New York. Additionally, News Corp. is headquartered here and Myspace can hardly claim to be inconvenienced by defending this action in the world's largest media market where it does substantial business. Certainly, New York City is more convenient to Myspace than Austin where it has no operations. Thus, this factor favors retention of the lawsuit.

B. The location of the documents and sources of proof favors retention.

The majority of the documents in this case will be produced by Defendants from their headquarters. The only sources of evidence in Texas are Plaintiffs' computer and medical records,[2] both of which Plaintiffs will voluntarily produce in New York. On the other hand, Defendants' documents concerning (1) communications regarding prior incidents, (2) policies for Myspace.com users, (3) communications and documents concerning security measures, and (4) other relevant documents should be quite substantial. In short, the sources of proof in Austin

[2] Plaintiffs seriously doubt that the Austin District Attorney will make any of his investigation or records available for the prosecution of this case.

likely consist of a redwell as opposed to multiple boxes of documents from Defendants' headquarters. Thus, this factor favors retention of the lawsuit too.

C. The location of witnesses and the location of events do not favor a transfer

On first blush, it might appear that the epicenter of this lawsuit is Texas. But that ignores the realities of the underlying events that allowed this rape to occur. Essentially, there are two stages to this lawsuit. Solis contacted Julie Doe and got to her know through Myspace.com and the rape occurred in Austin. Plaintiffs concede that Solis, Detective Joel Pridgeon, and the Doctor are necessary witnesses and that Austin is more convenient to them.

But although the actual rape and aftermath in this case occurred in Austin, the acts and omissions that enabled the rape to occur took place in Defendants' board rooms and at their places of business. Defendants' decisions concerning what safety measures to take or not take, as well as Defendants' representations concerning the website's safety measures are the true center of events for this lawsuit. As such, most of the relevant actors will be Defendants' employees and former employees, and a trial in New York would be manifestly more convenient to them.

The Court can choose to apply the law where the enabling acts occurred or the law of where the rape occurred. Plaintiffs respectfully submit that giving due consideration to where the enabling acts occurred is especially important since Defendants' acts enabled this to happen multiple times across the country. It is important that the law be applied uniformly throughout these cases and therefore Texas law is likely inapplicable. Stated differently, if Defendants had acted prudently at headquarters, then this case and the anticipated interventions would never have occurred. Hence, the focus of the underlying events really concerns how these tragedies were allowed to happen.

D. Plaintiffs' choice of forum and judicial economy greatly favor retention of this case

Plaintiffs have chosen this forum to prosecute her case and that choice is entitled to great deference. Defendants have failed to prove that the factors "strongly favor" transfer just on the facts of her case. But, transfer is particularly inappropriate when the Court takes into account that this case will soon involve the prosecution of five other nearly identical cases, each of which is based on Defendants' same negligent enabling acts and misrepresentations. Importantly, discovery can be consolidated and the costs will be lower for all parties involved. Additionally, trial will be far more efficient (and convenient) since one trial regarding Defendants' conduct, as opposed to six, will save the Court's and parties' time and resources while ensuring that inconsistent results are avoided. The Second Circuit has a strong policy favoring the litigation of related claims in the same tribunal. *See Wyndham Associates v. Bintliff*, 398 F.2 614, 619 (2d Cir 1968). And jurisdiction and venue are proper and convenient in New York, where Defendants reside and make decisions regarding the safety measures utilized by MySpace. Hence, judicial economy, coupled with the facts of this particular case, demonstrates that MySpace's Motion to Transfer should be denied.

IV.

Conclusion

The Court should deny Defendants' Motion its entirety.

Respectfully submitted,

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Dated: November 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2006, this document was served via facsimile and certified mail, return receipt requested, to the following counsel of record:

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